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SUPREME COURT OF THE UNITED STATES

October Term, 1939

No. 11

CLARA SCHNEIDER, Petitioner,

v.

THE STATE (Town of Irvington), Respondent.

CERTIORARI FROM
NEW JERSEY COURT OF ERRORS AND APPEALS

PETITIONER'S BRIEF

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Opinions Below

The Opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460 and appears at page 21 of the Record. The Opinion of the New Jersey Court of Errors and Appeals is reported at 121 New Jersey Law 542 and appears at page 25 of the Record.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

The New Jersey Court of Errors and Appeals is the highest court of the State of New Jersey in which a judgment may be had, and its decree was a final judgment in this case.

Timeliness

The judgment of the New Jersey Court of Errors and Appeals was entered on the 8th day of February, 1939. (R. 27) The petition for writ of certiorari was filed herein before the expiration of three months from February 8, 1939, to wit, on the 27th day of February, 1939. (R. 29) Copies of the petition and transcript of record were served on counsel for respondent on the 6th day of March, 1939.

The Statute

The statute, the validity of which as construed and applied to petitioner is here drawn in question, is an ordinance of the Town of Irvington, New Jersey, which reads as follows:

ORDINANCE NO. 1437

Ordinance Regulating Canvassing Within the Town of Irvington and Providing Penalties for the Violation Thereof.

Be it Ordained by the Board of Commissioners of the Town of Irvington, in the County of Essex, State of New Jersey, as follows:

Sec. 1. No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge at Police Headquarters.

Sec. 2. The Chief of Police or in his absence the officer in charge at Police Headquarters shall have power to grant permit to canvass, which permit shall specify the number of hours or days that the permit will be in effect and such officer shall refuse to issue a permit in all cases where the application of the canvasser or further investigation to be made at the discretion of such officer, shows that the canvasser is

not of good character, or that he is canvassing for a project not free from fraud. The Chief of Police or in his absence the officer in charge at Police Headquarters shall revoke the permit for failure or refusal on the part of the permittee to observe the rules and regulations herein set forth.

Sec. 3. Before the permit may be issued the canvasser shall make an application to canvass, giving his or her full name and address, age, height, weight, place of birth, whether married or single, length and place of residence, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn and description of project for which he or she is canvassing. Each applicant shall be fingerprinted and photographed before a permit shall be issued.

Sec. 4. Rules and Regulations:

No person shall canvass within the Town, except between the hours of 9 a.m. and 5 p.m. A copy of the permittee's photograph shall be carried on his or her permit, which photograph shall be furnished by the applicant. The permittee shall exhibit his or her permit to any police officer or other person upon request. The permittee shall be courteous to all persons in canvassing and shall not importune or annoy any of the inhabitants of the Town and shall conduct himself or herself in a lawful manner. On expiration of the permit the holder thereof shall surrender the same to the officer in charge at Police Headquarters.

Sec. 5. This ordinance shall not affect any person engaged in the delivery of goods, wares, or merchandise or other articles or things in the regular course of business to the premises of persons ordering or entitled to receive the same.

Sec. 6. Any person violating the provisions of this ordinance shall be subject to a fine not exceeding One Hundred Dollars ($100.00) or to imprisonment in the County Jail for a period not exceeding thirty days.

In the event of the imposition of a fine and default in the payment thereof the defendant may be imprisoned in the County Jail for a term not exceeding thirty days.

Sec. 7. This ordinance shall take effect on final passage and publication according to law.

Adopted September 10, 1935.

(Signed) J. Edward Jacobi, Herbert Kruttschnitt, Harry E. Stanley, Percy A. Miller, Commissioners.

Attested by Town Clerk.

In holding that the ordinance is not unconstitutional because it abridges freedom of speech and press and freedom of worship, in violation of the Fourteenth Amendment to the Constitution of the United States, the New Jersey Court of Errors and Appeals applied the ordinance to the petitioner and decided in its favor as so applied.

Statement

The petitioner, Clara Schneider, was arrested on December 7, 1935, in the Town of Irvington, New Jersey, and charged with canvassing in said town without a permit from the chief of police or officer in charge at police headquarters. (R. 7)

The ordinance under which she was charged prohibits canvassing, soliciting, distributing circulars, or calling from house to house without first having reported to and received a permit from the chief of police or the officer in charge at police headquarters. It stipulates the conditions under which such permit may be issued and provides a penalty not exceeding $100 or thirty days in jail. (R. 8-10)

On December 17, 1935, petitioner was tried before the local Recorder, found guilty, and sentenced to pay a fine of $100 or serve thirty days in jail. (R. 8)

On December 21, 1935, the case was appealed to the Common Pleas Court of Essex County (R. 4), where the

conviction was affirmed on May 12, 1937. (R. 10-11) Opinion of the court appears at page 11 of the Record.

On June 25, 1937, the New Jersey Supreme Court issued a writ of certiorari to the Essex County Court of Common Pleas in this case (R. 2) and after due hearing thereon the conviction was affirmed by the Supreme Court on August 10, 1937. (R. 20) Opinion of the court is reported at 120 N. J. Law 460, and is shown at pages 20-22 of the Record.

An appeal was taken to the New Jersey Court of Errors and Appeals on September 21, 1938. (R. 1) The Court of Errors and Appeals affirmed the judgment of conviction on January 13, 1939. Its opinion is shown at page 25 of the Record.

At the time of the appeal to the Essex County Court of Common Pleas there were pending before that court four similar cases, which were tried under a stipulation of facts filed in the case of *The State* v. *Clara Schuster*. (R. 5-7)

Another stipulation was then entered into whereby it was stipulated and agreed that the substance of facts in the Schuster case apply to petitioner herein in her case. (R. 5) The facts applicable to this case, with the exception of name and dates, are those stated in the stipulation in the Schuster case, shown at pages 5 to 7 of the Record.

Petitioner is one of Jehovah's witnesses, an ordained minister of the gospel. The alleged violation of the ordinance consisted of visiting residents of Irvington, exhibiting to them her Testimony and Identification Card (R. 22-23) and leaving or offering to leave with them certain printed literature for which she solicited or accepted contributions in the form of money. The literature thus circulated consisted of booklets setting forth the gospel of the Kingdom of Jehovah God. Those entered as exhibits are filed separately and marked "Exhibits".

Petitioner did not apply for or obtain a permit from the police department because she regarded herself as sent by Jehovah God to do His work and that such application

would have been an act of disobedience to His commandment.

Federal Questions Presented

In her appeal from the Common Pleas Court to the New Jersey Supreme Court petitioner raised the Federal questions of religious liberty, freedom of worship and freedom of speech as guaranteed under the Fourteenth Amendment. (R. 17-18) The New Jersey Supreme Court considered and passed upon such questions and specifically held that the ordinance did not deny such freedom of speech, worship or press. (R. 22)

These questions were again raised on the appeal to the New Jersey Court of Errors and Appeals (R. 1-2) and that Court specifically considered in detail and passed upon the issues of freedom of speech, worship and press as guaranteed under the Fourteenth Amendment. (R. 25-26) The Court stated:

> "We do not think it [the Irvington ordinance] violates the Federal Constitution under the rule laid down in the case of Lovell vs. Griffin, supra."

Therefore, there are presented for review Federal questions as follows:

Whether a municipal ordinance may, without violating the due process clause of the Fourteenth Amendment, require persons to secure a license to circulate and distribute printed matter of information and opinion concerning the worship of God, in exchange for contributions in the form of money.

It is contended that insofar as applied to the petitioner, the said ordinance of the Town of Irvington violates the Fourteenth Amendment in the following particulars:

(a) It abridges petitioner's rights of freedom of speech and press which are included within the liberties guaranteed by the due process clause of the Fourteenth Amendment.

(b) It abridges petitioner's right to worship Almighty God according to the dictates of conscience, which right is included within the liberty guaranteed by the due process clause of the Fourteenth Amendment.

Specification of Errors to Be Urged

Petitioner assigns the following errors in the record and proceedings in said case:

1. The court below erred in holding that Ordinance No. 1437 of the Town of Irvington as construed and applied to the petitioner is not void by reason of the fact that as thus construed and applied it is in conflict with the due process clause of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

(a) It abridges and denies freedom of speech and freedom of press.

(b) It abridges freedom of worship and of conscience and religious liberty.

2. The court below erred in holding the ordinance as construed and applied to the petitioner is a valid exercise of the police power.

Points for Argument

POINT I

Ordinance No. 1437 of the Town of Irvington as construed and applied by the New Jersey Court of Errors and Appeals unreasonably restricts and denies freedom of speech and press and is, therefore, unconstitutional and invalid under the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The right to freedom of speech and freedom of press is secured in the due process clause of the Fourteenth Amendment.

B

Petitioner was engaged in exercise of activities of the press.

C

The application of the ordinance unduly restricts and denies petitioner's right to freedom of speech and press.

D

The opinion of the New Jersey Court of Errors and Appeals states an unsubstantial distinction between this case and that of *Lovell v. City of Griffin*, 303 U. S. 444.

POINT II

Ordinance No. 1437 of the Town of Irvington as construed and applied to petitioner by the New Jersey Court of Errors and Appeals unreasonably restricts and denies the right of freedom of worship and religious liberty and is therefore invalid under the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The right to worship Almighty God in accordance with the dictates of conscience is an essential privilege of every person who resides within the jurisdiction of the United States of America.

B

The right to religious liberty is included within the rights secured under the due process clause of the Fourteenth Amendment.

C

The act of preaching the gospel orally or in printed form to persons by going from house to house may not lawfully be subjected to the "burdensome and inquisitorial conditions" of the Irvington ordinance.

Summary of Petitioner's Argument

Petitioner is one of Jehovah's witnesses. At the time of her arrest she was engaged in preaching the gospel by expounding the Word of Almighty God, either orally or in printed form, to persons by going from house to house. She alleges she was doing this in obedience to the mandate of Almighty God. While so doing she left or offered to leave with people certain books or booklets for which she solicited or accepted contributions in the form of money. The books and booklets and a magazine so circulated contained information and opinion on matters concerning the good news of Jehovah's Kingdom. She did not apply for or obtain a license or permit from the police department of Irvington because she conscientiously maintained and believed that to apply for such permit would be an act of disobedience to Almighty God. On trial in the Recorder's Court of Irvington she was sentenced to pay a fine of $100 or serve thirty days in jail. This sentence was affirmed by the Court of Common Pleas, Supreme Court and Court of Errors and Appeals of New Jersey.

Petitioner was circulating printed matter containing information and opinion, and therefore engaged in activities of the press. The Irvington ordinance with its licensing restraint and burdensome conditions of photographing, fingerprinting, limiting of hours of activity and other restraints unreasonably restricted and denied her right to freedom of the press. The fact that she solicited or received contributions in the form of money did not bar her right to the guarantees of freedom of the press. The argument of the New Jersey Court of Errors and Appeals that because she was "canvassing" distinguishes this case from *Lovell* v. *City of Griffin* (303 U. S. 444) is unsubstantial. The ordinance as applied unduly abridges petitioner's right to freedom of the press and is therefore invalid because it violates the due process clause of the Fourteenth Amendment.

Religious liberty, freedom of conscience and freedom of worship are of equal right with freedom of speech, press and assembly. The act of preaching the gospel orally or by printed page from house to house cannot lawfully be subjected to the previous restraint of license or censorship. The ordinance as applied abridges petitioner's right to freedom of worship and conscience and of religious liberty and is therefore invalid because it violates the due process clause of the Fourteenth Amendment.

Argument

POINT I

Ordinance No. 1437 of the Town of Irvington as construed and applied by the New Jersey Court of Errors and Appeals unreasonably restricts and denies freedom of speech and press and is therefore invalid under the due process clause of the Federal Constitution.

A

The right to freedom of speech and press is secured under the due process clause of the Federal Constitution.

Gitlow v. New York
268 U. S. 652

Whitney v. California
274 U. S. 357

Grosjean v. American Press Co.
297 U. S. 233

Lovell v. City of Griffin
303 U. S. 444

Hague v. C. I. O.
59 S. Ct. R. 954 (decided June 5, 1939)

B

Petitioner was engaged in activities of the press.

At the time of her arrest petitioner was visiting residents of Irvington at their homes. She carried with her printed matter containing information and opinion, consisting of copies of a periodical, *The Golden Age*, and two booklets entitled "Government" and "Escape to the Kingdom". (R. 6) These she offered to the people and in return asked for a contribution of ten cents, which would be used to print more of the same type of booklets. (R. 23)

In *Lovell* v. *City of Griffin*, supra, this Court defined the press in the following words:

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. . . . The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean* v. *American Press Company*, supra, was held invalid because of its direct tendency to restrict circulation."

Petitioner's actions come within this definition. She was circulating booklets and copies of a periodical. Whether for such informative printed matter she solicited contributions to cover the expense of printing the same, or delivered them free, is not material.

The point is that she was engaged in communicating a printed message to people at their homes, and therefore exercising her right to freedom of the press.

C

The application of Ordinance No. 1437 of the Town of Irvington to petitioner by the New Jersey Court of Errors and Appeals unduly restricts and denies her right to freedom of speech and press.

Justice Case of the New Jersey Supreme Court, in the case of *Town of Westfield* v. *Milgram*, 122 N. J. L. 221, well described the conditions of this type of ordinance as "burdensome and inquisitorial". Any person desiring to disseminate informative matter from house to house in Irvington must file an application for permission to do so. Said application must disclose the applicant's name, address, age, height, weight, birthplace, marital condition, record of convictions, employer, description of clothing, description of project, and be accompanied by applicant's photograph and fingerprints. The ordinance limits his hours of activity to the period from 9:00 a.m. to 5:00 p.m. It covers canvassing, soliciting, distributing circulars, or going from house to house without such permission. The permit is issued by the chief of police or the officer in charge at police headquarters if he on investigation considers the applicant to be of "good character" and his project "free from fraud". (R. 8-9)

The ordinance gives the police department complete control over the circulation of informative matter throughout the municipality. It is left to the department's discretion in granting permission based on its determination of what it considers "good character" or "fraud". A prior conviction of any offense would undoubtedly stand as a mark of 'bad character" in the eyes of the department. An ex-convict selling books on prison reform could be interdicted under the ordinance without any redress. Circulation of protest against police or other official corruption could be suppressed easily.

There is no material difference between the discretionary power given to the police under this ordinance and that given to the City Manager under the Griffin (Ga.) ordinance. The City Manager had uncontrolled discretion:

The Irvington police department's discretion is limited only by its definition of what constitutes "good character" or "fraud".

The ordinance further provides that the applicant shall not "annoy" any of the inhabitants of the town. That is a prohibition on the dissemination of controversial matter. The pamphlets of Thomas Paine, William Lloyd Garrison, Alexander Hamilton and other American patriots annoyed many people. It is impossible to circulate information on a disputed issue without annoying someone. At any time upon proof of such annoyance being presented the Irvington police chief may revoke the permit given. (R. 9)

We submit that these "burdensome and inquisitorial" conditions not only strike at the foundation of freedom of the press, but make a complete amputation thereof.

There can be no freedom where the right of circulating information and opinion is subjected to the uncontrolled discretion of the head of the police department. License and censorship are here invoked in undisguised form, and the ordinance should be held void in accordance with the principles set forth in *Lovell* v. *City of Griffin*, supra, and *Hague* v. *C. I. O.*, 59 S. Ct. R. 954 (decided June 5, 1939).

D.

The opinion of the New Jersey Court of Errors and Appeals states an unsubstantial distinction between this case and that of *Lovell* v. *City of Griffin*, 303 U. S. 444.

The New Jersey Court of Errors and Appeals attempts to distinguish between *Lovell* v. *City of Griffin* and this case by reason of the fact, as stated, that petitioner was "canvassing", whereas in the *Lovell* case defendant was distributing printed matter without a permit. We quote from the opinion:

> "The difference between the ordinance in the Lovell case and the one in the present case is thus quite marked. In the Lovell case there was no charge of 'canvassing' or 'soliciting', and, indeed, the ordinance

there did not prohibit these things. The charge was simply distributing printed matter without a permit. The charge in the instant case was canvassing without a permit, in violation of the ordinance. And it is stipulated that she 'did call from house to house . . . and did leave or offer to leave with said occupants certain books or booklets, for which defendant solicited or accepted contributions in the form of money . . .'

"We are dealing here with the validity of the ordinance only insofar as it requires a permit for canvassing within the municipality. We deem this to be a valid exercise of the police power to promote the safety and welfare of the people. A municipality may protect its citizens against fraudulent solicitation, and when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose and we do not think it violates the federal constitution under the rule laid down in the case of Lovell vs. Griffin, supra." (R. 26)

The New Jersey Supreme Court made the same distinction. (R. 22)

Further disclosure of the New Jersey Supreme Court's point of view concerning freedom of the press is given in the case of *Town of Westfield* v. *Milgram*, 122 N. J. L. 221. Milgram was charged with violating a duplicate of the Irvington ordinance. The facts showed that he was handing out circulars to persons who were assembling for an adult evening class. Justice Case in reversing the conviction stated:

"The structure of the ordinance is such that, for the reasons given below, I am convinced that the ordinance was not intended and ought not to apply to distribution independent of canvassing, solicitation or house to house calling."

Thus it appears that in the opinion of the New Jersey high courts the guarantees of freedom of press enunciated

in the *Lovell* v. *City of Griffin* decision apply only for circulation gratis upon the public streets. If the person engaged in such activity *canvasses, solicits,* or *goes from house to house,* then the "burdensome and inquisitorial conditions" of the ordinance apply.

We respectfully submit that this constitutes a flat contradiction of this court's holding in *Lovell* v. *City of Griffin.* This court holds that freedom of the press includes publication and circulation of printed matter containing information and opinion, and that the press may not be subjected to license or censorship.

It may be conceded that the liberty to publish and circulate does not include a free and untrammeled privilege of press activity regardless of the rights of others. But although the rights of the public are protected from abuse, it may not under the guise of 'reasonable police regulation' chisel off liberty of the press by subjecting that to license.

Such rights as the public may have to restrict or proscribe the press are clearly stated in the *Lovell* decision. They are as follows:

1. Liberty of the press does not include the right to publish and distribute immoral and obscene matter.
2. Liberty of the press does not include the right to publish and distribute seditious matter.
3. The public may prohibit littering of the streets with printed matter.
4. Disorderly conduct or molestation of the people may be prohibited even though done as an activity of the press.
5. There may be reasonable restrictions as to time and place of distribution.

By no stretch of the imagination can it be said that the facts of this case come within the purview of any of the above limitations. There is nothing immoral or seditious about the literature distributed by petitioner. She did not litter the streets with it; and there is no suggestion that

she was guilty of disorderly conduct or interference with people's rights. Neither is there any evidence that she circulated periodicals and books at any unreasonable time or place. She is not charged with violation of any of these restrictions. The charge is that she *did canvass without securing a license* as provided by the municipal ordinance.

The Irvington ordinance goes far beyond the reasonable limitations just specified. As applied, that ordinance subjects the press to a blanket license requirement. It gives the police department discretionary control over the issuing of such license. It imposes upon the person who engages in lawful press activity "burdensome and inquisitorial conditions" of photographing, fingerprinting, disclosing of life history and other matters. Justification for applying the ordinance to petitioner is based on the bald claim that she was "canvassing". The stipulated facts show that petitioner called from house to house and exhibited to householders her testimony and identification card (Exhibit S-2, R. 22) and left or offered to leave certain books or booklets, for which she solicited or accepted contributions in the form of money. She was engaged in the circulation of printed matter containing proper information and opinion. Therefore petitioner's act is not distinguishable as differing in any material way from the acts of defendant in the *Lovell* case.

The Griffin ordinance prohibited distribution of printed matter whether sold or delivered gratis. The record in the *Lovell* case does not show whether Alma Lovell sold or canvassed for the sale of literature. She was one of Jehovah's witnesses, as is the petitioner in this case. They both acted under the direction of a corporation duly organized and chartered for "dissemination of Bible truths" orally and by means of the printed page; and a reasonable inference is that they both worked in the same or a similar manner. Furthermore, the record shows that Alma Lovell went

from house to house, even as did the petitioner. We quote from the record in the *Lovell* case:

> "At the time of my arrest I had been calling on the people at their homes. I told them about the Kingdom of Jehovah. I displayed to them books and booklets which explain the gospel of the Kingdom and gave them opportunity to secure the printed message."
>
> Lovell v. City of Griffin, supra
> Record p. 12, fol. 17

The only visible distinction between the action of defendant Lovell and petitioner Schneider is that Clara Schneider "solicited or accepted contributions in the form of money" in exchange for literature, and the record does not show that Alma Lovell solicited or accepted such contributions. We submit that is a distinction without a difference. It is the acme of absurdity to claim that liberty of the press is limited to the *free* circulation, i.e., delivery *gratis*, of printed matter. Publishers of daily newspapers and other periodicals would be astounded and shocked to find that the precious guaranty of freedom of the press was removed from them solely because they asked and received money in exchange for their labor and services. The contention of the lower court is without merit and without legal support.

The trend of court decisions is contrary to that of the lower court. Attempts to license and censor the *sale* of printed matter have been held invalid by the courts prior to the case of *Lovell* v. *City of Griffin*.

> Star Co. v. Brush
> 185 N. Y. App. Div. 261
> Star Co. v. Brush
> 104 N. Y. Misc. 404
> Dearborn Publishing Co. v. Fitzgerald
> 271 Fed. 479

In the case of *Grosjean* v. *American Press Co.*, 297 U. S. 233, this Court held that the tendency of the license tax on advertising in a certain class of periodicals would be to restrict circulation and therefore declared the law invalid.

So in the case at bar, the imposition of the ordinance's "burdensome and inquisitorial conditions" would tend to restrict circulation and therefore the Irvington ordinance when applied to the sale of printed matter containing proper information and opinion should be held invalid.

In the case of *City of Cincinnati* v. *Walter F. Mosier*, 61 Ohio App. 81, the defendant, one of Jehovah's witnesses, was charged with violation of a Cincinnati peddling ordinance. He was engaged in the same activity as the petitioner in the instant case. On appeal from a conviction the Court of Appeals for the First Appellate District of Ohio reversed the decision and held the ordinance inapplicable to the act of disseminating printed informative matter. The court declared that the ordinance

> "can have no more application to the defendant for the acts charged in the affidavit than it could if it were attempted to apply it for an act performed outside the state, county or city."

The City of New York Magistrates' Court passed upon a similar question in the case of *The People* v. *Max Banks*, 6 N. Y. S. (2d) 41 (N. Y. City Magis. Ct., First Dist., Manhattan, 1938). In this case the defendant was charged with unlawfully peddling books in the City of New York, without having a peddler's license. The ordinance in question, Chapter 36, Article 6, of the Administrative Code of the City of New York, required a license for such purpose. The court referred to *Lovell* v. *City of Griffin* and held as follows:

> "I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of selling a pamphlet on the public streets and to impose a penalty of fine and imprisonment for violation of the section mentioned.
>
> "In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:

"The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulation is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in Grosjean v. American Press Company, supra, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the sale of pamphlets on the streets has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code permits free distribution of literature on the public streets without restriction. Free circulation depends as much and conceivably more upon sale than upon free distribution considering the cost involved in the free distribution of literature. Adequate circulation may often be rendered possible through sale defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon sale and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid . . . it well might result in destroying circulation.'"

In the case of *People* v. *Samuel Finkelstein*, 2 N. Y. S. (2d) 941, defendant was accused of selling pamphlets upon the streets of the City of New York in violation of an ordinance regulating peddling of merchandise on the streets. The court dismissed the defendant and held as follows:

"In the instant case we do not hold the provisions of the Administrative Code unconstitutional for the reason that the term merchandise does not include the pamphlets which were being sold by defendant. The views expressed herein are not inconsistent with the acknowledged right of the legislature, in the exercise of the police power, to regulate the use of streets, provided such regulation does not undertake to prohibit the distribution or sale of pamphlets, leaflets and other printed matter as well as newspapers and periodicals.

Accordingly the judgment should be reversed and the complaint dismissed."

It cannot be denied that in the case at bar petitioner was engaged in that line of activity called *"the press"*. Regardless of any proper purpose attending adoption of the Irvington ordinance, the undeniable fact is that as applied it amputates petitioner's right to freedom of the press by subjecting it to burdensome license requirements and conditions. The prevention of this form of previous restraint was a leading purpose in the adoption of the constitutional provision safeguarding freedom of the press.

Lovell v. City of Griffin
supra
Near v. Minnesota
283 U. S. 697
Grosjean v. American Press Co.
supra

The court below justifies the validity of the ordinance as applied as an exercise of the police power to promote the safety and welfare of the people. (R. 26) The theory appears to be that the application, photographing, fingerprinting and investigation operates to prevent possible frauds, burglaries and robberies. Thus anticipation of violation of law is turned to serve as an excuse for using the police power to *control* and *regulate* the individual person's lawful exercise of a constitutional right. Justice Brandeis in *Whitney* v *California*, 274 U. S. 357, 378, stated:

"The fact that speech is likely to result in some violence . . . is not enough to justify its suppression."

Applying the logic of that statement to the facts of this case, we paraphrase as follows:

"The fact that canvassing, soliciting or calling from house to house upon the people might result in fraud, burglary or robbery is not enough to justify impos-

ing a previous restraint through license with "burdensome and inquisitorial conditions" upon freedom of the press.'

In other words, the right of free press may not be conditioned upon a possible violation of law by some crook or second-story craftsman. Prevision of disorder or violation of law is an improper condition, a previous restraint, which contradicts itself and is void.

Near v. Minnesota
supra
De Jonge v. Oregon
299 U. S. 353
Dearborn Pub. Co. v. Fitzgerald
supra
Hague v. C. I. O.
supra

We submit that if anticipation of violation of the law is to be the criterion for imposition of restriction on fundamental rights, then every approach of the individual to the public may be made the subject of licensing with "burdensome and inquisitorial conditions". The clergyman may be subjected to prior restraint for fear he may advocate violence or seditious acts by his hearers. Attendants at any public assembly could be subjected to prior health examination to prevent spread of disease. Grocers may be subjected to character examination and license for fear of their imposing fraud. The automobile is often used in the commission of crime. Why not require automobile owners to furnish evidence of good character and proof that their vehicle is not to be used for wrongful or unlawful purposes? This theory, advanced by the New Jersey courts, opens the door to the imposition of many obsolete and totalitarian regulations which destroy the freedom guaranteed to every upright person under the fundamental law of this "land of liberty".

There is a constant, persistent attempt on the part of subversive elements in this country to chisel off freedom

of the press. This court's opinion in *Lovell* v. *City of Griffin*, with its clear, lucid declaration of principles, put a check on much of that subversive activity; but now the attempts are directed afresh, to cut off little by little the beneficial effects of that constructive decision. In New Jersey the press is limited to free circulation on streets and in public places. In Massachusetts, Wisconsin and California the courts of last resort have sustained ordinances prohibiting distribution on the streets. (Cases now before this Court, to wit, *Young* v. *California*, No. 13; *Snyder* v. *Milwaukee*, No. 18; *Nichols* v. *Massachusetts*, No. 29.) If the decisions of these courts are correct, then the circulation of printed matter containing information and opinion from house to house, by canvass or solicitation, and on the streets, is subject to the previous restraint of license or prohibition. Freedom of the press becomes such in name only and this Court's ruling in *Lovell* v. *City of Griffin* is overridden.

It is submitted that the Irvington ordinance as construed and applied is unconstitutional and invalid.

POINT II

Ordinance No. 1437 of the Town of Irvington as construed and applied to petitioner by the New Jersey Court of Errors and Appeals unreasonably restricts and denies the right of freedom of worship and religious liberty and is therefore invalid under the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The right to worship Almighty God in accordance with the dictates of conscience is an essential privilege of every person who resides within the jurisdiction of the United States of America.

From the foundation of the United States this has been recognized as a Christian nation; which means that the people endeavor to follow the lead of Christ Jesus. The Lord Christ Jesus always obeys the law of Jehovah God. All Christians are duty-bound likewise to obey the law of Almighty God, Jehovah. (See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.)

The petitioner is an ordained minister of the gospel of the kingdom of Christ, a Christian, wholly consecrated and devoted to the service of Almighty God. For her to willingly disobey the commandments of God would mean her destruction, as she thoroughly believes.

To worship Almighty God means to obey His commandments, and therefore to serve Him as commanded by His law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit: and they that worship him must worship him in spirit and in truth."—John 4:24.

Black's *Law Dictionary* defines "worship" as the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the

court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience*.

At the time of her arrest the petitioner was engaged in worshiping Almighty God in spirit and in truth by acting strictly in obedience to His commandments and in harmony with her conscientious belief. Following are some of the commandments of Almighty God which the Christian must obey:

"Ye are my witnesses, saith the Lord, that I am God." —Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus.

To all Christians the following commandment is given by the Lord:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature." —Mark 16:15.

With all good conscience petitioner was obeying God's commandments by presenting to the people the message of God's Word, and presenting the same in printed form and inviting them to read the same quietly in their homes. If any thus approached declined to hear, petitioner quietly passed on to the next householder. In no way was she violating the law of morality or of property, nor did her acts infringe on personal rights, nor were they inimical to the safety of the state.

In going from house to house with the gospel message and thus worshiping God according to her conscientious belief, petitioner was following exactly the example of

Jesus Christ and His apostles. Concerning Him it is written; "He went round about the villages, teaching." (Mark 6:6) "He went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God: and the twelve were with him."—Luke 8:1.

Jesus sent His apostles from house to house, to preach the gospel. "And, as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into an house, salute it. And if the house be worthy, let your peace come upon it: but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet."—Matthew 10:7, 12, 13, 14.

The apostles taught publicly by going from house to house. See Acts 20:20.

The petitioner was thus worshiping Almighty God, Jehovah, according to the God-given commandment and in accordance with the dictates of her conscience, and was doing so within the bounds of the State of New Jersey, the Constitution of which state guarantees to every person that right.

"No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience."

New Jersey Constitution,
Article 1, Section 3

The right to thus worship Almighty God is guaranteed to every person under the Fourteenth Amendment of the United States Constitution.

Hamilton v. Regents
293 U. S. 245
Meyer v. Nebraska
262 U. S. 390

It is not within the power or authority of the Town of Irvington by ordinance to abridge or interfere with any person in his conscientious worship of Almighty God.

Human creatures or human powers cannot set aside

the Divine law nor prevent the individual person's conscientious obedience to the law of Almighty God.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Cooley's *Constitutional Limitations*,
8th Ed., page 968

Supreme

Almighty God Jehovah is supreme, and all who live must depend upon Him and obey Him. He is "the fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, . . . The statutes of the Lord are right, . . . the commandment of the Lord is pure."—Psalm 19:7, 8.

The people of all nations where the Bible is believed to be God's Word of truth have recognized the supremacy of His law as therein written. A recognized authority on the common law has well said:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being independent of any other being has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him on whom he depends as the rule of his conduct. This principle therefore has more or less extent and effect in proportion as the superiority of the one, and the dependence of the other, is greater or less, absolute or limited, and consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will. . . .
>
> "The will of his Maker is called the law of nature. . . .
>
> "This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obli-

gation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this;* and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original.

"But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office is to discover, as was before observed, what the law of nature directs in every walk of life, by considering what method will tend the most effectively to our own substantial happiness. And if our reasons were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passion, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy. But every man now finds the contrary in his own experience; that his reason is corrupt and his understanding full of ignorance and error.

"This has given manifold occasion for the benign interposition of Divine Providence, which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, *and they are to be found only in the Holy Scriptures.*

"Upon these two foundations, the law of nature, and the law of revelation, depend all human laws. *That is to say no human laws should be suffered to contradict these.*"

Blackstone Commentaries,
Chase 3d ed. 5-7

In the case of *Holy Trinity Church* v. *United States*, 143 U. S. 457, this Court declared in plain terms that the United States "is a Christian nation". The United States has always recognized that the law of Almighty God is

supreme; that His law is superior to the law of the state. In that opinion Mr. Justice Brewer among other things adds:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to this present hour, there is a single voice making this affirmation."

The law of Almighty God commands the doing of exactly what the petitioner was engaged in doing at the time of her arrest, namely, worshiping Almighty God, serving Him by preaching this gospel of the Kingdom by going from house to house and presenting the same to the people in printed form. This work she was engaged in doing for the good of mankind. The Town of Irvington cannot by ordinance deprive petitioner of the privilege of obeying God's commandment. It follows, therefore, that the Town of Irvington can have no authority by ordinance or otherwise to issue a permit to do what Jehovah God commands must be done. Petitioner was proceeding exactly within her rights, and it would have been improper for her to ask for or even receive a permit from the Town of Irvington to do what she was doing, since God commands the doing thereof.

B

The right to religious liberty is included within the rights secured under the due process clause of the Fourteenth Amendment.

Meyer v. Nebraska
supra
Hamilton v. Regents
supra

C

The act of preaching the gospel orally or in printed form to persons by going from house to house may not lawfully be subjected to the "burdensome and inquisitorial conditions" of the Irvington ordinance.

The stipulated facts show that petitioner is an ordained minister of God and Christ. (R. 5-7, 23), a follower of Jesus Christ engaged in preaching the gospel by expounding the Word of Almighty God, either orally or in printed form, to persons by going from house to house. She was so engaged at the time of her arrest, and for so doing without meeting the ordinance requirements she was arrested and convicted. (R. 6)

Freedom of conscience, freedom of worship and religious liberty are not limited to right of establishment and maintenance of the various denominations. The early struggles in this land for freedom of worship were largely centered upon the right to hold public assemblies and for groups of individuals to act unitedly according to their understanding of God-given commands contained in the Bible, contrary to the prevailing religion of the state. That battle was fought 150 years ago, and today in these United States over two hundred religious denominations act freely, unhampered by censorship or restriction. But that fundamental liberty goes far beyond the right of Protestants, Jews and Catholics to build churches, hire preachers and attend meetings.

That liberty includes the right of the individual person to practice right principles and to teach Bible truths fully and freely. We quote:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all."
>
> Watson v. Jones
> 80 U. S. 728

This Court in *Davis* v. *Beason*, 133 U. S. 333, defined "religion" as follows:

> "The term 'religion' has reference to one's views of his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter."

When Jesus Christ and His apostles went from place to place and house to house they were engaged in the actual worship of Almighty God. The petitioner in visiting householders to bring to them the gospel in printed form was engaged in the actual worship of Almighty God. Petitioner asserts (R. 6) that she is engaged in this work in obedience to the command of Almighty God and therefore it becomes to her a conscientious obligation. The licensing provision with its burdensome conditions thus abridges her freedom of conscience.

If *Watson* v. *Jones*, supra, is a valid statement of the extent of religious freedom (and considering the source of that statement it should be so regarded), there can be no license requirement or prohibition of petitioner's right and duty to perform the God-given command recognized by all followers of Jesus Christ that they must preach the gospel.

Freedom of conscience, freedom of worship and religious liberty are inherent rights of equal value with freedom of speech, press and assembly. This Court holds in the *Lovell* case that to subject the press to license or censorship strikes at the very foundation of freedom of the press. Is it not then true that to apply the burdensome and inquisitorial licensing provisions of the Irvington ordinance to the petitioner's act of obeying Almighty God by preaching the gospel of the Kingdom of Almighty God from house to house in obedience to His command likewise strikes at the very foundation of freedom of worship and freedom of conscience?

What mysterious quality can there be in the principles of constitutional law which prohibits licensing or censoring of the press but authorizes a license for preaching the gospel of God's kingdom?

The principle here claimed was well stated by the Georgia Court of Appeals in the case of *Thomas* v. *City of Atlanta*, 1 S. E. (2d) 598. Thomas, the defendant, is one of Jehovah's witnesses, was convicted of violating an Atlanta ordinance requiring persons to register their business. The court held:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and teach his religion. See in this connection, Lovell v. Griffin, [303] U. S. [444], 82 L. ed. 660. We are not meaning to hold by this decision that a business of selling or peddling books may not be subject to registration and a license tax. We hold that under the facts of this case it was error to adjudge this defendant guilty. Judgment reversed."

The case now here was tried upon the stipulation which appears on pages 5 and 6 of the Record, which stipulation includes Exhibit S-2, which Exhibit appears at pages 22 and 23 of the Record.

Exhibit S-2 contains these words:

> "These three booklets please read carefully, and by contributing, say, ten cents you will make it possible to print more of these which can be placed in the hands of other persons desiring truth."

There is not one word of testimony in the record showing or even indicating that your petitioner by thus obeying God's commandment in preaching the gospel was in any manner endangering the inhabitants of the community. The remark in the opinion rendered by the Court of Common Pleas, to the effect that there was a disturbance of the peace of the citizens and possible danger to the inhabitants, is wholly unsupported by any evidence whatsoever. This part of the opinion of the court below therefore is clearly indicative of the prejudice of that court against the rights of your petitioner. This ruling of the Common Pleas Court overrides the constitutional provision of the State of New Jersey relative to the worship of Almighty God. The same ruling is also contrary to what this Court has repeatedly held relative to the right of worshiping Almighty God.

Until recently an ordinance such as that of the Town of Irvington here under consideration, and as construed and applied by the court below, was not dreamed of in America. But since the dictatorial Hague régime has operated in the State of New Jersey many unusual, strange and un-American things have come to pass. That dictatorial influence has affected even the courts of that state as the record in this case discloses. Counsel who practice in the courts are warned thereby that they may be held for contempt by reason of appearing as the legal representative of persons who are charged with violating such ordinance as that of the Town of Irvington.

The dictatorial powers of New Jersey have recently denied the right of peaceable assembly, restricted the freedom of the press, and freedom of speech, and deported persons who attempted to exercise such lawful rights in that state. (*Hague* v. *C. I. O. et al.*, decided June 5, 1939) Now the effort is made to prevent the worship of Almighty God except at the whim and by the permit of police officials. The record here discloses that there is a studied effort in New Jersey to prevent, by the law of men, the

doing of what the law of Almighty God commands must be done by persons who are Christians.

There is not one word in the record showing that the petitioner was canvassing. Many persons, in the exercise of their religious and lawful privileges, solicit money and that without giving anything in return. The petitioner was engaged in presenting to the people at their homes the gospel of Jesus Christ in printed form and accepting only a nominal contribution, which contribution was to be used for the purpose of printing more like Bible instruction that the people may have the same. Where no contribution was forthcoming and one desired to read the literature, it was freely given to them. In these days of great stress surely such charitable work should be commended rather than prevented.

The petitioner could not comply with the terms of the ordinance of the Town of Irvington as construed and applied in the court below for the following reasons:

(1) Because such ordinance as construed and applied is in direct violation of the Constitution of the State of New Jersey guaranteeing the right to worship Almighty God according to one's conscience.

(2) Because the right to worship Almighty God according to one's conscience is guaranteed by the Constitution of the United States.

(3) Because said ordinance, as construed and applied by the court below, is in direct conflict with the law of Almighty God.

When the apostles of Jesus Christ were haled into court, charged with preaching the gospel contrary to the whims of certain officials, they answered: "We ought to obey God rather than men." (Acts 5:29) The same rule applies to Christians today. The enactment and construing of ordinances restricting the free exercise of worshiping Almighty God is an attempt to 'frame mischief by law'. —Psalm 94:20.

For the reasons herein stated, the judgment of the court below should be reversed and the petitioner fully discharged.

Respectfully submitted,

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